

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JESUS RODRIGUEZ,
Petitioner,
v.
KEVIN ROONEY,
Respondent.

Case No. 2:22-cv-01898-JDP (HC)

ORDER GRANTING PETITIONER'S
APPLICATION TO PROCEED IN FORMA
PAUPERIS AND DISCHARGING ORDER
TO SHOW CAUSE

ECF Nos. 4 & 5

SCREENING ORDER FINDING THAT THE
PETITION DOES NOT STATE A
COGNIZABLE SECTION 2254 CLAIM AND
GRANTING LEAVE TO AMEND WITHIN
THIRTY DAYS

ECF No. 1

Petitioner, a state prisoner proceeding without counsel, seeks a writ of habeas corpus under 28 U.S.C. § 2254. After reviewing the petition, I find that it is deficient because it both fails to state a claim and fails to indicate which, if any, of petitioner's claims were exhausted in state court. I will give petitioner a chance to amend before recommending that this action be dismissed.

The petition is before me for preliminary review under Rule 4 of the Rules Governing Section 2254 Cases. Under Rule 4, the judge assigned to the habeas proceeding must examine the habeas petition and order a response to the petition unless it "plainly appears" that the

1 petitioner is not entitled to relief. *See Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019);
2 *Boyd v. Thompson*, 147 F.3d 1124, 1127 (9th Cir. 1998).

3 Petitioner brings five claims related to a 2018 conviction. First, he alleges that there was
4 insufficient evidence to convict him of a felony murder special circumstance, but he provides no
5 specifics as to how the evidence was lacking. ECF No. 1 at 5. The second claim appears to
6 mirror the first insofar as it alleges that petitioner was convicted of felony murder with
7 insufficient evidence. *Id.* at 7. Again, it does not allege how the evidence was insufficient.
8 Third, petitioner claims that he was convicted of attempted robbery and a separate murder, and
9 that there was insufficient evidence to support either conviction. *Id.* at 8. As before, he does not
10 offer any specifics. Fourth, petitioner claims that, in addition to being, convicted of murder with
11 a robbery special circumstance, he was also convicted of mayhem and attempted robbery. *Id.* at
12 10. Petitioner does not allege how, or if, these latter two convictions were unconstitutional.
13 Finally, he claims that the court imposed an “unauthorized” ten-thousand-dollar “restitution fine.”
14 *Id.* at 13. Petitioner does not state how this component of his sentence was unauthorized or
15 violative of his rights. I find that the petition fails to state a claim. *See James v. Borg*, 24 F.3d
16 20, 26 (9th Cir. 1994) (holding that “conclusory allegations which are not supported by a
17 statement of specific facts do not warrant habeas relief”).

18 Further, petitioner has left blank most of the areas of the federal habeas form which are
19 intended to indicate whether a claim has been exhausted in state court. *See, e.g.*, ECF No. 1 at 11.
20 If he chooses to amend, he should complete the form in its entirety.

21 Petitioner may, if he chooses, file an amended petition that addresses these deficiencies.
22 If he does not, I will recommend that this action be dismissed.

23 It is ORDERED that:

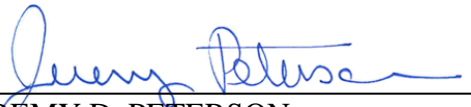
24 1. Petitioner may file an amended § 2254 petition within thirty days of this order’s
25 entry. If he does not, I will recommend that the current petition be dismissed for the reasons
26 stated in this order.

27 2. The Clerk of Court is directed to send petitioner a federal § 2254 habeas form with
28 this order.

1 3. Petitioner's application to proceed *in forma pauperis*, ECF No. 5, is GRANTED
2 and the order to show cause, ECF No. 4, is discharged.

3
4 IT IS SO ORDERED.

5 Dated: February 16, 2023


JEREMY D. PETERSON
UNITED STATES MAGISTRATE JUDGE